THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KUNIKAZU KOURA

Appeal No. 95-3141
Application No. 08/070,863[1]

HEARD: October 14, 1998

Before HAIRSTON, KRASS, and MARTIN, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 2, 3 and 5, all of the claims remaining in the application.

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[1] Application for patent filed June 3, 1993.

The invention relates to an elevator car position detector and is illustrated by reference to representative independent claim 2, reproduced as follows:

2. An elevator car position detecting apparatus for detecting the position of an elevator car along an elevator shaft, said elevator car position detecting apparatus comprising:

at least first and second operating devices provided on a side wall of the elevator shaft, each operating device provided at an operation position defined along the elevator shaft, each of said at least first and second operating devices including a plurality of operating elements disposed in a row in a direction perpendicular to the direction of travel of the elevator car in such positions that the operation positions can be encoded by using two or more ON/OFF signals, the plurality of operating elements of said first operating device being arranged such that at least one of the operating elements is misaligned with at least one of the operating elements of said second operating device along the direction of travel of the elevator car; and

a detecting device provided on said elevator car, said detecting device including a plurality of detecting elements provided corresponding to said operating elements so that, when said elevator car is at any one of said operation positions, some of said detecting elements are operated by the corresponding operating elements and thereby generate a signal coding the position of said elevator car wherein the operating elements of said operating devices are shielding plates, and wherein each of said detecting elements of said detecting device comprises a transmitter portion and a receiver portion which can be shielded from each other by one of the shielding plates.

The examiner relies on the following references:

Aron	3,983,961	Oct. 5, 1976
Caputo et al. (Caputo)	4,433,756	Feb. 28, 1984

Claims 2 and 3 stand rejected under 35 U.S.C 102(b) as anticipated by Aron. Claim 5 stands rejected under 35 U.S.C. 102(b) as anticipated by Caputo.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We will not sustain any of the rejections under 35 U.S.C. 102(b) as, in our view, the examiner has not established a prima facie case of anticipation.

Turning first to the rejection of claims 2 and 3, the examiner contends that Aron anticipates the claimed subject matter. The examiner points to two operating devices, P1 and P2, in Aron and that these devices are arranged in a row up the hoistway and such that one of them is misaligned with the other.

Reference to Aron discloses that the plate sections P1 and P2 are employed to facilitate precise leveling of the elevator car at a particular floor. In one embodiment, this is achieved by the shaping of the individual plate sections (the amount of truncation of their apexes) and, in another embodiment, this is achieved by the width of the shoulders S of the plates. See column 4, lines 18-25 of Aron.

We find nothing in Aron suggestive of the encoding and/or position detection described and required by instant claims 2 and 3. More specifically, the claims require first and second operating devices each comprising a plurality of operating elements disposed in a row in a direction perpendicular to the direction of travel of the elevator car "in such positions that the operation positions can be encoded by using two or more ON/OFF signals." The plurality of operating elements of the first operating device are misaligned with the plurality of operating elements of the second operating device along the direction of travel of the elevator car so that when the elevator car is at any one of the operating positions, detecting elements are operated by corresponding operating

elements at that position in order to generate a signal coding the position of the elevator car. We find nothing in Aron suggestive of such claimed features.

While the examiner's response [answer-page 4] is that there is nothing in the claims relative to the encoding of operational positions and, as such, it is irrelevant that the plates of Aron are in the same position for each floor, instant claims 2 and 3 certainly do require that "the operation positions can be encoded by using two or more ON/OFF signals" and then further recite how the detection elements generate a signal coding the position of the elevator car based on the misalignment of the operating elements of the first and second operating devices. Clearly, then, the examiner's failure to take into account the misalignment and encoding features of the instant claimed invention because of the examiner's erroneous finding that such features formed no part of the instant claimed invention constitutes grounds for reversal for a lack of a prima facie case of anticipation.

Further, for the reasons set forth by appellant [reply brief-pages 2-3], we find that the examiner's argument regarding the generation of "on" and "off" signals by Aron to be unpersuasive since even if Aron somehow could be construed to disclose such signals, and we do not contend that Aron can be so construed, there is clearly no detection circuitry in Aron to detect any such "on" and "off" signals.

Turning now to the rejection of claim 5 as anticipated by Caputo, we also will not sustain this rejection. Looking at Figure 2 of Caputo, it is the examiner's contention that Caputo teaches two operating elements (tracks 76 and 78) wherein the holes in the two tracks are misaligned in order to detect the position of an elevator car via detection means 100, 102, 92 and 94. It is the examiner's position that the space between the holes is considered to be the claimed "optical shielding plates."

Appellant argues that Caputo does not suggest the use of optical shielding plates disposed in a row perpendicular to the direction of travel of the elevator car for encoding the

position of the car. Appellant further argues that the instant optical shielding plates are more reliable than devices such as polymeric film, as shown in Caputo, and that the positioning of the plates horizontally along operating device 62a of the instant disclosure provides position detection without movement of the elevator car or the use of a plurality of vertically spaced LEDs.

With regard to the reliability argument, there is nothing in the claims which would preclude the use of polymeric film while, with regard to the argument that the invention provides position detection without movement of the car or the use of LEDs, there is also nothing in the claims precluding detection by movement of the car or with the use of LEDs. Accordingly, these arguments are irrelevant with regard to the *claimed* subject matter and, therefore, unpersuasive.

However, claim 5 requires that each of the first and second operating devices (defined by the examiner as tracks 76 and 78 of Caputo) have a plurality of operating elements (the holes in each track) disposed in a row (the vertical nature of

the holes in each track can be considered a “row”) and that the row be “in a direction perpendicular to the direction of travel of the elevator car.” Clearly, the “operating elements” in Caputo are disposed in a row in a direction which is parallel to, or in the same direction as, the direction of travel of the elevator car. Therefore, the structure taught by Caputo does not anticipate the claimed invention.

We have not sustained either the rejection of claims 2 and 3 or the rejection of claim 5 under 35 U.S.C. 102(b). Accordingly, the examiner’s decision is reversed.

Appeal No. 95-3141
Application No. 08/070,863

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN C. MARTIN Administrative Patent Judge	)	

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Appeal No. 95-3141
Application No. 08/070,863

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REVERSED

Prepared: July 12, 1999

HEARD - October 14, 1998

3 MEMBER CONFERENCE